

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,
Plaintiffs,

v.

WILBUR ROSS, et al.,
Defendants.

CITY OF SAN JOSE, et al.,
Plaintiffs,

v.

WILBUR L. ROSS, et al.,
Defendants.

Case No. [18-cv-01865-RS](#)
[18-cv-02279-RS](#)

**ORDER RE DEFENDANTS' MOTION
IN LIMINE AND OBJECTIONS TO
PLAINTIFFS' TRIAL DECLARATIONS**

On January 7, 2019, Defendants¹ filed (1) a motion *in limine* to prevent Plaintiffs² expert Matthew Barreto from testifying about Question 8 of his survey and (2) written objections to several of Plaintiffs' trial declarations.

¹ Defendants in these two related matters are Wilbur Ross, in his official capacity as Secretary of the U.S. Department of Commerce; the U.S. Department of Commerce; Ron Jarmin, in his official capacity as Acting Director of the U.S. Census Bureau; and the U.S. Census Bureau.

² Plaintiffs in Case No. 18-cv-1865 are the State of California, the County of Los Angeles, the City of Los Angeles, the City of Fremont, the City of Long Beach, the City of Oakland, the City of Stockton, and the Los Angeles Unified School District (collectively, "California Plaintiffs"). Plaintiffs in Case No. 18-cv-2279 are the City of San Jose and the Black Alliance for Just Immigration ("BAJI") (collectively, "San Jose Plaintiffs").

A. Defendants' Motion *in Limine*

Defendants' motion to exclude the testimony of Dr. Barreto regarding Question 8 of his survey was denied at trial on January 7, 2019.

B. Objections to the San Jose Plaintiffs' Trial Declarations1. Margo Anderson

Defendants' objections to paragraphs 15-35 of Dr. Anderson's affidavit and Exhibits 2, 3, and 4, which support these paragraphs, are sustained. The objection to Exhibit 1, Dr. Anderson's expert report, as hearsay is sustained, however the expert may as appropriate identify and refer to portions of her expert report in her testimony.

2. Jill Bourne

Defendants' objections regarding the affidavit of Jill Bourne are overruled.

3. Kristen Clements

Defendants' objections to paragraphs 1, 15, 20, and 21 for lack of foundation are sustained. The objection to paragraph 11 is overruled. With respect to paragraph 4, Defendants agreed to withdraw their objections based on the San Jose Plaintiffs' offer to strike the sentence "Over the past decade, the growth of the technology sector has brought many well-paying jobs to San Jose, but has also made housing much more expensive." Clements Decl. ¶ 4. Accordingly, per the parties' agreement, this sentence is stricken.

4. Monique Melchor

Defendants' objections to the trial declaration of Monique Melchor, which was supplemented on January 9, 2019, are overruled.

5. Andrew Reamer

After the submission of Defendants' objections, the San Jose Plaintiffs filed a notice offering to strike certain portion of Dr. Reamer's trial affidavit. At trial on January 10, 2019, the San Jose Plaintiffs agreed to strike additional portions of the affidavit and to file an updated declaration reflecting these changes. Defendants' objections to the remaining paragraphs were overruled. The objection to Exhibit A, Dr. Reamer's expert report, as hearsay is sustained,

1 however the expert as appropriate may identify and refer to the report in his testimony.
 2 Defendants' objections with respect to Exhibit B, the expert's *curriculum vitae*, is overruled.
 3 Exhibits C, D, and E are hearsay; however, the expert may make reference to these exhibits under
 4 Federal Rule of Evidence 703 to the extent that he relied on such materials in forming his expert
 5 opinion.³

6 6. Raymond Riordan

7 Defendants' objections to the trial declaration of Raymond Riordan, which was
 8 supplemented on January 8, 2019, are overruled.

9 7. Jeff Ruster

10 The portions of paragraph 9 of Jeff Ruster's declaration that describe statements made by
 11 various stakeholders are not admitted for the truth of the matter asserted but are admitted as
 12 relevant for non-hearsay purposes. Defendants' objections to paragraphs 12, 14, and 15 are
 13 overruled. Exhibit A is not admitted for the truth of the matter asserted but is admitted as relevant
 14 for non-hearsay purposes. Defendants' objection to this exhibit for lack of authentication is
 15 overruled.

16 8. Opal Tometi

17 After the filing of Defendants' objections, the San Jose Plaintiffs submitted an amended
 18 version of Opal Tometi's declaration. Defendants subsequently withdrew their objections based on
 19 these changes.

20 **C. Objections to the California Plaintiffs' Trial Declarations**

21 1. Douglas Baron

22 Attachments A and B to the affidavit of Douglas Baron are not admitted for the truth of the
 23 matter asserted but are admitted as relevant for non-hearsay purposes.

24 2. Amy Bodek

25
 26 ³ The California Plaintiffs, who are also offering Dr. Reamer as a witness, agreed to the changes
 27 suggested by the San Jose Plaintiffs. Accordingly, the resolution of the objections described in this
 28 section apply to both sets of plaintiffs.

Defendants' objections to Amy Bodek's testimony are overruled.

3. Jefferson Crain

Defendants' objections to paragraphs 12, 13, 16, 17, 19, 21, 25, and 26, as well as PTX 855, 856, 857, and 858 are sustained.

4. Pia Escudero

Defendants' objections to PTX 848, 849, 850, 851, 852,⁴ and 853 as hearsay not within an exception are sustained.

5. Bernard Fraga

Defendants' objections to the declaration of Dr. Fraga were ruled upon at trial on January 10, 2019. To summarize, Defendants withdrew their objection to paragraph 40 of Dr. Fraga's affidavit. The objections relating to paragraphs 49 and 64 were overruled. Defendants' objection with respect to Exhibit A, Dr. Fraga's *curriculum vitae*, was overruled. Exhibits B, C, and D are admitted under Rule 703.

6. Karen Ryback

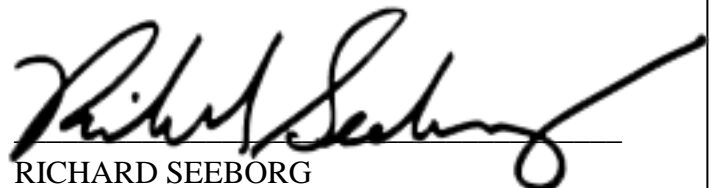
Defendants' objections to PTX 845, 846, and 847 as hearsay not within an exception are sustained.

7. Andrew Westall

Defendants' objection to paragraph 22 as improper lay testimony is sustained. Defendants' remaining objections to the Westall declaration and exhibits are overruled.

IT IS SO ORDERED.

Dated: 01/11/2019


RICHARD SEEBORG
United States District Judge

⁴ Misidentified as PTX 853 in Defendants' written objections.